

217.7404-4

217.7404-4 Limitations on obligations.

(a) The Government shall not obligate more than 50 percent of the not-to-exceed price before definitization. However, if a contractor submits a qualifying proposal before 50 percent of the not-to-exceed price has been obligated by the Government, then the limitation on obligations before definitization may be increased to no more than 75 percent (see 232.102-70 for coverage on provisional delivery payments).

(b) In determining the appropriate amount to obligate, the contracting officer shall assess the contractor's proposal for the undefinitized period and shall obligate funds only in an amount consistent with the contractor's requirements for the undefinitized period.

[60 FR 29498, June 5, 1995, as amended at 74 FR 37650, July 29, 2009]

217.7404-5 Exceptions.

(a) The limitations in 217.7404-2, 217.7404-3, and 217.7404-4 do not apply to UCAs for the purchase of initial spares.

(b) The head of an agency may waive the limitations in 217.7404-2, 217.7404-3, and 217.7404-4 for UCAs if the head of the agency determines that the waiver is necessary to support—

- (1) A contingency operation; or
- (2) A humanitarian or peacekeeping operation.

[60 FR 29498, June 5, 1995, as amended at 63 FR 67804, Dec. 9, 1998; 71 FR 27643, May 12, 2006]

217.7404-6 Allowable profit.

When the final price of a UCA is negotiated after a substantial portion of the required performance has been completed, the head of the contracting activity shall ensure the profit allowed reflects—

(a) Any reduced cost risk to the contractor for costs incurred during contract performance before negotiation of the final price;

(b) The contractor's reduced cost risk for costs incurred during performance of the remainder of the contract; and

(c) The requirements at 215.404-71-3(d)(2). The risk assessment shall be documented in the contract file.

[74 FR 37650, July 29, 2009]

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217.7405 Plans and reports.

(a) To provide for enhanced management and oversight of UCAs, departments and agencies shall—

(1) Prepare and maintain a Consolidated UCA Management Plan; and

(2) Prepare semi-annual Consolidated UCA Management Reports addressing each UCA with an estimated value exceeding \$5 million.

(b) Consolidated UCA Management Reports and Consolidated UCA Management Plan updates shall be submitted to the Office of the Director, Defense Procurement and Acquisition Policy, by October 31 and April 30 of each year in accordance with the procedures at PGI 217.7405.

(c) Consolidated UCA Management Reports shall include information about all change orders that are not forward priced (*i.e.*, unpriced) and have an estimated value exceeding \$5 million.

[74 FR 37650, July 29, 2009, as amended at 75 FR 48277, Aug. 10, 2010]

217.7406 Contract clauses.

(a) Use the clause at FAR 52.216-24, Limitation of Government Liability, in—

- (1) All UCAs;
- (2) Solicitations associated with UCAs;
- (3) Basic ordering agreements;
- (4) Indefinite-delivery contracts;
- (5) Any other type of contract providing for the use of UCAs; and
- (6) Unpriced change orders with an estimated value exceeding \$5 million.

(b)(1) Use the clause at 252.217-7027, Contract Definitization, in—

- (i) All UCAs;
- (ii) Solicitations associated with UCAs;
- (iii) Basic ordering agreements;
- (iv) Indefinite-delivery contracts;
- (v) Any other type of contract providing for the use of UCAs; and
- (vi) Unpriced change orders with an estimated value exceeding \$5 million.

(2) Insert the applicable information in paragraphs (a), (b), and (d) of the clause.

(3) If, at the time of entering into the UCA or unpriced change order, the contracting officer knows that the definitive contract action will meet the criteria of FAR 15.403-1, 15.403-2, or 15.403-

3 for not requiring submission of cost or pricing data, the words “and cost or pricing data” may be deleted from paragraph (a) of the clause.

[75 FR 48277, Aug. 10, 2010]

Subpart 217.75—Acquisition of Replenishment Parts

217.7500 Scope of subpart.

This subpart provides guidance on additional requirements related to acquisition of replenishment parts.

[56 FR 36345, July 31, 1991, as amended at 71 FR 27643, May 12, 2006]

217.7501 Definition.

Replenishment parts, as used in this subpart, means repairable or consumable parts acquired after the initial provisioning process.

[71 FR 27643, May 12, 2006]

217.7502 General.

Departments and agencies—

(a) May acquire replenishment parts concurrently with production of the end item.

(b) Shall provide for full and open competition when fully adequate drawings and any other needed data are available with the right to use for acquisition purposes (see part 227). However—

(1) When data is not available for a competitive acquisition, use one of the procedures in PGI 217.7504.

(2) Replenishment parts must be acquired so as to ensure the safe, dependable, and effective operation of the equipment. Where this assurance is not possible with new sources, competition may be limited to the original manufacturer of the equipment or other sources that have previously manufactured or furnished the parts as long as the action is justified. See 209.270 for requirements applicable to replenishment parts for aviation or ship critical safety items.

(c) Shall follow the limitations on price increases in 217.7505.

[56 FR 36345, July 31, 1991, as amended at 69 FR 55989, Sept. 17, 2004. Redesignated and amended at 71 FR 27643, May 12, 2006; 73 FR 1827, Jan. 10, 2008]

217.7503 Spares acquisition integrated with production.

Follow the procedures at PGI 217.7503 for acquiring spare parts concurrently with the end item.

[71 FR 27643, May 12, 2006]

217.7504 Acquisition of parts when data is not available.

Follow the procedures at PGI 217.7504 when acquiring parts for which the Government does not have the necessary data.

[71 FR 27643, May 12, 2006]

217.7505 Limitations on price increases.

This section provides implementing guidance for section 1215 of Public Law 98-94 (10 U.S.C. 2452 note).

(a) The contracting officer shall not award, on a sole source basis, a contract for any centrally managed replenishment part when the price of the part has increased by 25 percent or more over the most recent 12-month period.

(1) Before computing the percentage difference between the current price and the prior price, adjust for quantity, escalation, and other factors necessary to achieve comparability.

(2) Departments and agencies may specify an alternate percentage or percentages for contracts at or below the simplified acquisition threshold.

(b) The contracting officer may award a contract for a part, the price of which exceeds the limitation in paragraph (a) of this section, if the contracting officer certifies in writing to the head of the contracting activity before award that—

(1) The contracting officer has evaluated the price of the part and concluded that the price increase is fair and reasonable; or

(2) The national security interests of the United States require purchase of the part despite the price increase.

(c) The fact that a particular price has not exceeded the limitation in paragraph (a) of this section does not relieve the contracting officer of the responsibility for obtaining a fair and reasonable price.

(d) Contracting officers may include a provision in sole source solicitations